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ABSTRACT

Mediation is a process that enables two or more persons in a dispute to find mutually agreeable solutions to their differences with the aid of a mediator. The mediator does not take sides, but helps the disputants consider their options. Mediation is voluntary, and disputing parties must agree to participate. Furthermore, the mediator does not have the power to force an agreement. School mediation programs have been starting in schools across the United States as an alternative to traditional dispute resolution methods. Mediators in a school program are students who are trained in the mediation process and in critical listening skills. This manual is written to train students in grades 5 through 12 to facilitate the mediation process. The following chapters are presented as part of the 24 hours of training: (1) "Introduction to the Mediation Process"; (2) "Pre-Mediation Stage"; (3) "Mediation Stage"; (4) "Mediation Stage"; (5) "Mediation Stage and Post-Mediation"; (6) "Ethical Issues and Special Situations"; (7) "Integrated Roleplays"; and (8) "Legal Principles." Exercises and activities are presented with each chapter, and three roleplays are included. A related "Trainer's Guide" is designed to accompany this manual to train mediator trainers. (SLD)

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STUDENT MEDIATOR'S TRAINING MANUAL

Prepared by

Good Shepherd Neighborhood House
Mediation Program
Staff and Volunteers

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PREFACE

Shannon and LaShawna have been classmates for ten years and have most of the same classes and friends. They are fifteen years old. This year Shannon and LaShawna have been fighting in the cafeteria and on the bus. Lately their friends have begun to take sides. The main thing they argue about is Shannon's boyfriend. They also argue about clothes and hairstyles. Recently, Shannon accused LaShawna of stealing her new sweater from the locker room.

LaShawna hears about the Mediation Program because one of their friends is a Teen Mediator. She tells Shannon about it and they decide to try mediation.

Both are very nervous the day they go to mediation. They don't know what to expect. Shannon says she is furious about her missing sweater. LaShawna claims she didn't take it and says the real point is that Shannon gets jealous when LaShawna talks with her boyfriend.

With the help of the Student Mediator, Shannon really hears LaShawna for the first time. She realizes that LaShawna isn't interested in taking her boyfriend away from her. LaShawna expresses her fears about losing her old friend over these disagreements. Both girls agree not to divide their friends against them when an argument arises, but to talk it out. They also agree to go together to the school office to report the missing sweater, and to check the "lost and found" on the way.

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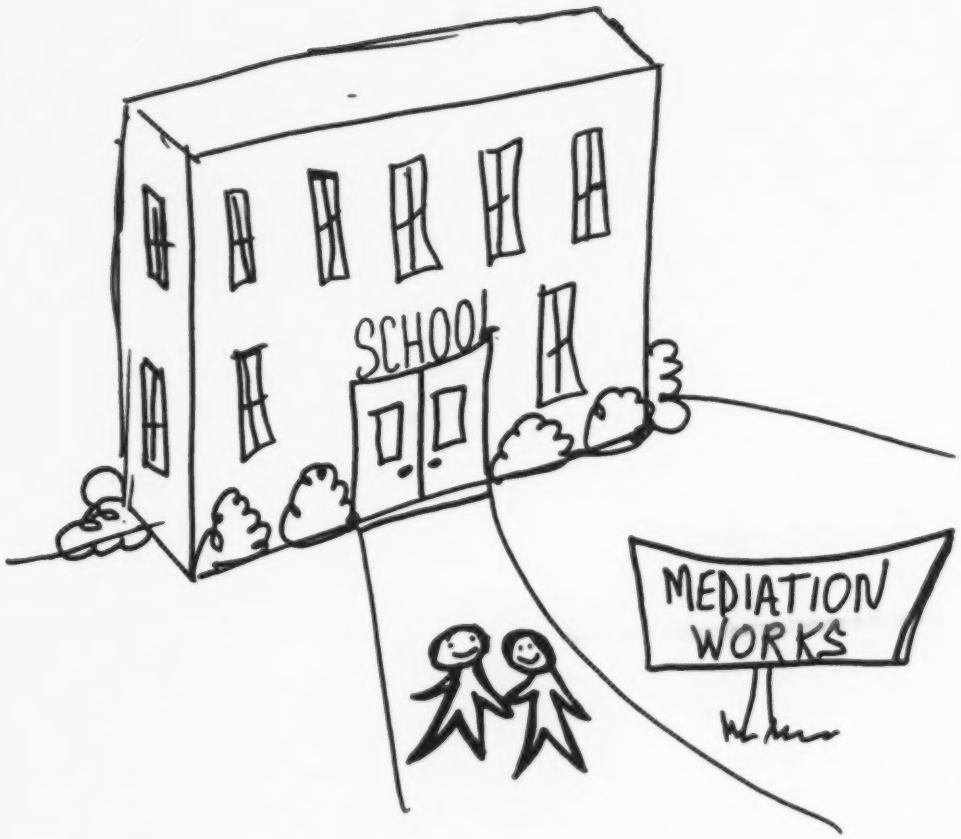


CHAPTER ONE

INTRODUCTION TO THE MEDIATION PROCESS

HOW DOES MEDIATION WORK?
SOME BASIC DEFINITIONS

What is Mediation?

MEDIATION is a process which enables two or more persons in a dispute to find mutually agreeable solutions to their differences with the aid of a mediator.

The MEDIATOR, who does not take sides, opens the lines of communication and helps the disputants consider their options. The mediator listens, asks questions and finds areas for agreement.

MEDIATION is not like a court, where a judge or jury decides who is right and who is wrong and there is always a winner and a loser. In mediation, the participants decide on solutions so everyone can be a winner.

MEDIATION is voluntary. The disputing parties must agree to participate. The mediator does not have the power to force an agreement on the parties.

CO-MEDIATION means that two mediators work together as partners. Everything the co-mediators do or say shows that they are completely neutral, meaning they do not take sides.

What is a School Mediation Program?

School mediation programs have been starting in schools across the United States. These programs offer an alternative to traditional dispute resolution methods used in schools, such as suspension.

A school mediation program can serve many important purposes. It encourages students to act maturely and responsibly when confronted with a conflict. A school mediation program also gives students a forum to resolve disputes among themselves without requiring staff attention. It provides students with an opportunity to take the time to get to underlying issues that may have started the problem or made it worse.

The positive results of active school mediation programs include less violence, truancy and suspension in the school, in general. Also, the grades of school mediators often improve.

School "troublemakers" often become school "peacemakers."

How does a case come to Mediation?

Student conflicts come to mediation in several ways. The disputing parties can ask to come to mediation, or it can be suggested by friends, a teacher or another staff member. Both participants must be willing to try mediation. A teacher or staff person fills out the Intake Form (see sample on p.14) and the mediation supervisor/trainer schedules the mediation as soon as possible.

Who are the Mediators?

Mediators in a school mediation program are students who are trained in the mediation process and in critical listening skills. They have learned to be neutral, to keep confidences and to guide disputants in decision-making.

EXERCISE #1

List things people fight about or get in trouble for at your school.

1.

2.

3.

4.

5.

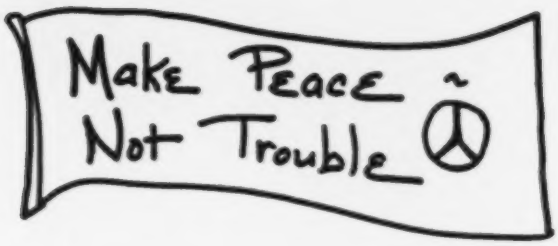
6.

7.

8.

9.

10.



EXERCISE #2

List the ways people solve the problems you listed in Exercise #1.

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

How are Student Mediators Selected?

Students volunteer to take Mediation Training because they want to learn peacemaking skills and help other students resolve their conflicts without fighting. During the 24-hour training, students learn the communication and problem-solving skills used in the mediation process.

EXERCISE #3

List the qualities you think a good mediator should have.

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

STAGES OF MEDIATION

PRE-MEDIATION STAGE

Attitude

Atmosphere

Preparing for Co-Mediation

MEDIATION PROCESS

Mediator's Opening Statement

Fact Finding

- parties' uninterrupted time/mediators active listening and summarizing
- gather information
- identify common interests

Caucusing – mediators meet with each party separately

Brainstorming Options

Collaboration/Evaluating Options

Bargaining

Writing the Agreement

Mediator's Closing Statement

POST-MEDIATION STAGE

Maintaining Neutrality

Maintaining Confidentiality

Debriefing – mediators discuss session with Mediation Supervisor

Follow-up

- If necessary, schedule another session
- If necessary, provide parties with referral or other information they requested during the mediation

CHAPTER TWO

PRE-MEDIATION STAGE

PRE-MEDIATION

The mediation session should be scheduled by the School Mediation Supervisor (or whomever is designated at the school to coordinate the peer mediation program at your school) as soon as possible after the referral is received. The Mediation Supervisor also fills out the Intake Form, selects the mediators, and notifies the participants involved when and where the mediation will be held. If students need to be released from class, the Mediation Supervisor will also coordinate with the classroom teachers.

The pre-mediation stage includes the time immediately before the actual mediation. Three factors to consider are: attitude, atmosphere, and preparing for co-mediation.

ATTITUDE

A person's attitude towards mediation is shown by what he/she says as well as his/her tone of voice, body language, etc. The mediators must notice the attitudes of both the parties and themselves prior to mediation.

Mediator Biases

Successful mediation depends on the mediator's ability not to take sides. However, every mediator has personal opinions, values, and prejudices which may bias the mediator for or against one of the parties.

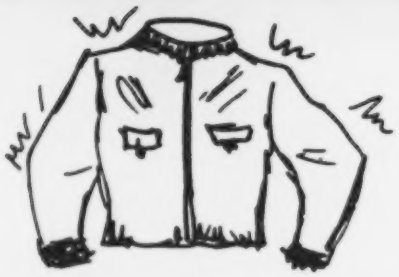
Some mediators may feel more at ease with friendly, talkative or popular people, and favor them without realizing it.

The mediator should never be a relative or close friend of either party because the other person might suspect the mediator of taking sides.

Current situations may affect the mediator's ability to remain impartial. For instance, a student who has just failed to make the basketball team might tend to be prejudiced against the star player.

The mediator must recognize his/her biases before deciding to take a particular case. The mediator should consider:

1. How he/she feels about the type of case
2. How he/she feels about the persons involved
3. What ideas or fears the parties may have about mediation.

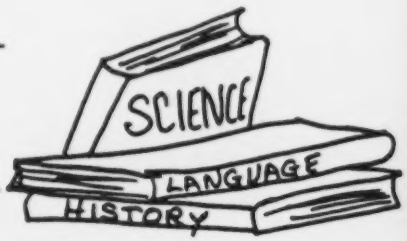


EXERCISE #1

The case involves an argument between two students. One of the students took the other's science book after a long-standing feud over a missing jacket.

Your jacket was stolen last month and never returned. It cost all your baby-sitting money to replace it.

Discuss with the person sitting next to you whether or not you should mediate the case.



EXERCISE #2

If you decide you could mediate the case, list several things you will do to stay neutral.

1.

2.

3.

The Parties' Attitudes

The disputing parties may also have fears about the mediator or the mediation process. It is normal for everyone to be anxious about unfamiliar situations.

EXERCISE #3

Put yourself in the shoes of the parties. List some of the fears they might have.

1. "I'll be forced to do something I don't want to do."
2. "You'll send me to the principal."
3. "Everyone will find out what we're talking about."
4.
5.
6.

Discuss how the co-mediators could reassure the parties by their behavior during the mediation session.

ATMOSPHERE

The Mediation Room – Setting the Stage

It is important that mediation take place in an area that is private, quiet and not subject to interruption. If possible, the Mediation Room should be used for no other purpose. It should not have distracting decorations. If a mediation room is not available, acceptable locations might be the school library or some other neutral area. If the mediation sessions are supervised, the mediation supervisor will be in the room. Other observers should be there only with the approval of the mediators and the disputing parties.

Table/Seating Arrangements

Round tables are ideal because no one has the position of authority (head of the table) and no one is actually confronting another person directly.

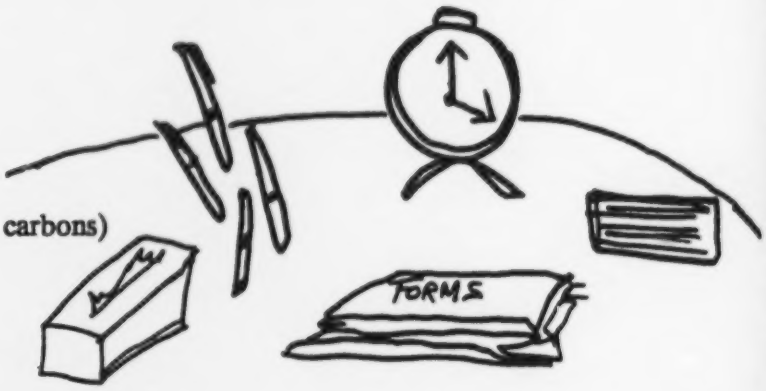
The mediator should plan a seating arrangement before the disputing parties enter the room. There is no right or wrong plan, but the mediator should choose an arrangement which encourages interaction between all parties, while keeping some space between everyone, including the mediators. The mediator does this to show that she/he is in control of the mediation process, but that the parties control the actual terms of the mediation agreement.

Supplies

The mediator makes sure that all of the necessary supplies are ready before the parties arrive.

Supplies include:

- Intake Form
- Scrap Paper
- Pens
- Agreement form (with two carbons)
- Calendar
- Clock or Watch
- Tissues



Time

The "timing" as well as the "time" of the mediation is important.

For example: Someone who must miss a favorite gym period might be less willing to participate, or might show up angry.

If it is the birthday of one of the participants, he or she might prefer to be at a party rather than at the mediation session.

Regardless of when the mediation is scheduled, the supervisor should request that all participants come on time. The mediator arrives a few minutes early to review the intake form.

PREPARING FOR CO-MEDIATION

"Co-mediation" is two mediators working together as a team. When two students, or a student and a trainer/supervisor, co-mediate, they should spend a few minutes planning how they will share responsibility for the session. For example, one mediator might make the opening statement, while the other might reassure the disputants about confidentiality at the beginning and end of the caucuses.

Co-Mediation Tasks

1. Meet before the session to review the Intake Form, plan the seating arrangement, determine what duties each mediator will perform, and decide on a signal you can give each other in case either of you wants to take a break or caucus.

2. Caucus together (without the disputants) to strategize, if necessary.
3. Meet after the session to debrief.

Co-Mediator Caucuses

If the co-mediators need to strategize privately, they may call a "mediator caucus" or "break." If the parties are not hostile and/or the Mediation Supervisor is in the caucus waiting area or an adjoining room, you may escort both parties to the caucus waiting area and the mediators can meet privately in the Mediation Room. If you don't want to leave the parties alone together, consider:

- Escorting one party to the caucus waiting area and leaving one party in the Mediation Room while the mediators walk down the hall or go into an empty classroom
- Escorting each party to a separate classroom, if several rooms are available

Advantages of Co-Mediation

1. It can be fun to work with someone else and see another mediator's style.
2. If you get stuck or make a mistake, your co-mediator can jump in to help you.
3. Strategizing together can be more productive than working alone (two heads are better than one!).
4. Working together and modeling good communication skills sets a good example for the disputants.

Co-Mediation Cautions

1. If you leave a disputant alone in the Mediation Room, take your notes with you.
2. Don't interrupt each other; model courtesy and cooperation.
3. If your co-mediator needs help, intervene politely; don't make fun of or scold him/her for making a mistake.
4. Don't have discussions or whisper to one another while the disputants are present.
5. Don't let your breaks last too long; remember the disputants are waiting.

EXERCISE #4

Meet with your Co-Mediator. Review the School Mediation Intake Form on page 14. Answer the following questions.

1. Who are the parties?

2. What issues are expressed in the Intake Form?

3. What issues are not listed on the Intake Form, but will be important?

4. Is there any reason why either of you should not mediate this case?

5. Where will you seat the parties during the mediation?

6. How will you and your co-mediator share responsibilities?

7. What is your signal?

8. Do you have any other questions about the Intake Form?

SCHOOL MEDIATION INTAKE FORM

Date 2/20/93 **Case ID:** GS9323

Initiating Party L Smith

Homeroom 102 **Grade** 9 **Teacher** York

Has the Initiating Party used mediation before?

☐ Yes, as Initiating Party ☐ Party

☐ Yes, as Responding ☒ No

Responding Party A Thompson

Homeroom 102 **Grade** 9 **Teacher** York

Has the Responding Party used mediation before?

☐ Yes, as Initiating Party ☐ Yes, as Responding Party ☒ No

Have these parties been in mediation together before?

☐ Yes, different conflict ☐ Yes, same conflict ☒ No

How long have these parties been involved with this current conflict?

☐ Not sure ☐ More than one week but less than a month ☐ One month or more

☒ One week or less

Referred by (name): _____

☐ Teacher ☐ Counselor ☒ Self

☐ Student ☐ NTA ☐ Other _____

This Conflict Involves:

☐ Disagreement (verbal) ☐ Truancy ☒ Property

☐ Rumors ☒ Behavior ☐ Money

☐ Fighting (physical) ☐ Rules ☐ Other _____

Presenting Problem: A threw L's new notebook in the mud.

Was a Mediation Scheduled?

☒ Yes ☐ No, explain _____

Mediation Date: TODAY **Time:** NOW **Room:** HERE

Co-Mediators Assigned: 1. YOU 2. YOUR CO-MEDIATOR

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CHAPTER THREE

MEDIATION PROCESS:
OPENING STATEMENT • FACT FINDING • CAUCUSING

OPENING STATEMENT

The mediator's Opening Statement describes the mediation process to the parties. It establishes some ground rules or guidelines for the session and sets a positive tone.

The elements of the Opening Statement include:

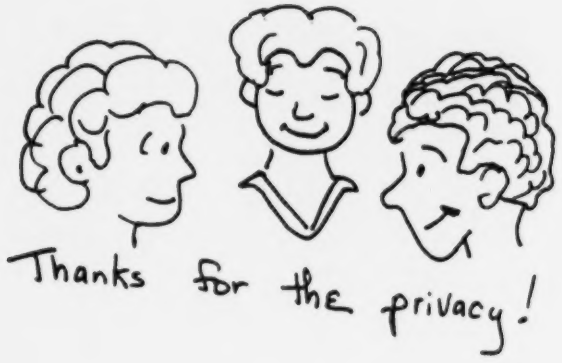
- Repeat your name and status: I am a volunteer mediator.
- Describe mediation:
  - Mediation is voluntary.
  - Mediation is a process in which two parties come up with a solution to their conflict with the aid of a mediator who is a neutral third party.
- Explain what you and they will do:
  - Each person will be asked to present his/her understanding of the situation.
  - The mediator will help to clarify the issues.
  - The parties, with the mediator's help, will begin to think about possible solutions to the problem.
  - If an agreement is reached, the mediator will put it in writing and everyone will receive a copy.
  - If an agreement is not reached, the mediator will assist each party in deciding the next best step to resolve the dispute.
- Describe the rules and ask the parties if they are willing to follow them:
  - No one may interrupt when another person is speaking.
  - No name calling.
  - Pencil and paper will be available for jotting down thoughts that occur while someone else is speaking.
  - It may be necessary to see the parties separately to gain a fuller understanding of the situation. This is called *caucusing*.
- Explain confidentiality:
  - Everything that occurs during mediation is kept confidential (private) by the mediators, **except** when information comes up which by law must be reported, such as child abuse.

- All notes that are taken will be destroyed except the Intake Form and the Agreement Form.

- Summarize mediation:
  - The mediator is neutral (does not take sides). The mediator guides the discussion, clarifies the issues and writes out the agreement when the disputants reach one.
  - The mediator thanks the parties for choosing mediation and asks for any questions about the mediation process.

During the Opening Statement:

- A tone is set
- Trust is created
- A structure is provided
- Participation is encouraged



EXERCISE #1

Write an opening statement using your own words. Include all the important points. Once completed, read your opening statement to the person next to you. This person will fill out the checklist on the next page to see if you have remembered all the main points.

PRACTICE TIPS

Speak slowly, and in a clear voice. Make eye contact with each party. Practice at home in front of a mirror to memorize the points and observe your body language.

Co-mediators: When two students are mediating together, one gives the opening statement and the other can fill in any gaps. This should be decided beforehand.

OPENING STATEMENT CHECK LIST

☐	INTRODUCE SELF	
☐	MENTION VOLUNTEER STATUS	
☐	DESCRIBE MEDIATION:	Voluntary for all participants
☐		Parties come up with solution
☐	ROLE OF MEDIATOR:	Does not take sides
☐		To guide the discussion
☐		To clarify issues
☐	PROCEDURES/RULES:	Ask the parties to present their understanding of the case
☐		No interrupting
☐		Jot down thoughts if someone else is talking
☐		Are there any questions before we begin?
☐	CAUCUSING:	If necessary, see each party separately. If you see one, you must see both. Separate meetings are called *caucuses*.
☐	SOLUTION:	If possible, come up with an agreement that is satisfactory to all
☐		Agreement is put in writing
☐		Everyone receives a copy
☐	CONFIDENTIALITY:	What occurs during mediation is confidential unless something comes up which, by law, must be reported (e.g., child abuse)
☐		All notes will be destroyed
☐		Only the complaint and agreement forms will not be destroyed
☐	CONCLUSION:	Thanks for choosing mediation

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FACT FINDING

Uninterrupted Time

"Uninterrupted Time" is when each party is given the opportunity to tell his or her side of the situation without interruption from the other party. Immediately following the mediator's Opening Statement, the mediator decides which of the parties will tell his/her story first. The mediator must decide who goes first in a way that appears to be impartial so that the parties don't feel as though the mediator is taking sides.

There are many ways to determine "who goes first." For example, the mediator could:

- ask the initiating party to begin
- select the person whose last name is first alphabetically
- ask which party has the next birthday
- toss a coin and let the winner go first

During the Opening Statement, the mediator asks the parties to not interrupt one another. It is important that the mediator not interrupt either. Each party speaks in turn. If someone interrupts to contradict or disagree, the mediator must remind the parties about the "no interrupting" ground rule and suggest that the interruptor make notes so he/she will remember to respond to specific issues during his/her uninterrupted time.

Active Listening and Summarizing

During each party's uninterrupted time, the mediators should listen carefully. After each party finishes his/her statement, the mediator summarizes what was said. "Summarizing" means to restate the facts and reflect the feelings expressed by the parties in your own words. This is also called "paraphrasing." The mediator summarizes for two main reasons: (1) to focus the discussion on the relevant issues; and (2) to communicate to the parties that the mediator is listening to both feelings and facts. Listening actively involves your whole body. Direct your attention through your: (1) eye contact; (2) facial expression; (3) acknowledgements (e.g., nodding); and (4) posture.

When restating, the mediator avoids making judgments. Do not restate mean (inflammatory) or hurtful (derogatory) statements.

Here are some phrases to start off your summarizing:

- So what I hear you saying is . . .
- You feel, perhaps, that . . .
- As I understand it, you . . .

- Am I correct in understanding that you . . .
- It sounds like you're concerned about . . .

After summarizing each party's statement, ask the parties if there is anything they would like to add. If so, continue listening and summarizing. If they have nothing to add or respond to, the mediator can begin to gather information.

Gathering Information

If more information is needed, the mediator needs to ask clarifying questions. The mediators should be careful to: use neutral language; ask nonjudgmental questions; and not offer advice. Some general questions to ask are:

- What would you like to see happen as a result of this mediation?
- What will happen if things continue as they are?
- Could you say more about . . .?

As the parties are speaking, the mediator identifies those issues that can be mediated, and gets agreement from the parties that those are the issues on which to focus. The mediators can take notes to keep track of the important issues. For example, in a dispute over a lost book, your notes may look like this:

Monique wants:	Jill wants
1. Jill to pay $5.00 for lost book	1. Monique to stop teasing her
2. Jill to apologize	2. Monique to stop borrowing money

Identifying Common Interests

"Interests" are the needs, desires, concerns, or fears that motivate the parties to take a certain "position." For example, in the dispute over the lost book, one of Monique's positions is that she wants $5.00 for the book she claims that Jill lost. The "interests" behind her position may be that she needs to replace the book for school and if she has to ask her mother for the money she will get in trouble because her mother recently warned her about losing too many things.

The mediator should continually look for common ground (interests that are important to both parties) and point out those interests to the parties. For example, if the mediator notices that both parties value their friendship, the mediator might say, "It looks like you both would like to stay friends."

If you are having trouble identifying the parties' interests, you could ask:

- Why is [the person's position] important to you?
- What concerns you about this situation?

EXERCISE #2

Practice your active listening and summarizing skills in groups of three.

STORYTELLER: Share the details of a dispute in which you are presently involved. If you cannot think of one, roleplay someone involved in a conflict who you recently read about or saw on TV.

ACTIVE LISTENER: Without making judgments, restate what you heard. Try to summarize the issues *and* acknowledge the feelings expressed.

OBSERVER: Critique the Active Listener's verbal responses and body language using this scale:

Needs Work (1) **Good (2)** **Excellent (3)**

Active Listener's Verbal Responses

Paraphrased other's feelings and ideas in own words _____

Did not indicate approval or disapproval _____

Used appropriate and understandable language _____

Did not make judgments or suggestions _____

Active Listener's Body Language

Eye Contact _____

Facial Expression _____

Acknowledgements _____

Posture _____

Comments:

_____

_____

_____

_____

_____

Repeat the exercise three times so everyone has a chance to practice being the Storyteller, the Listener, and the Observer.

CAUCUSING

To "caucus" means to hold separate sessions with each of the disputing parties. Ask one of the parties to wait outside the room, while you meet with the other person. So the waiting party doesn't become concerned while you're caucusing with the other party, the mediator can assign a task. For example, the mediator could suggest that the waiting parrty spend the time listing possible solutions. Escort the waiting party to an area outside the Mediation Room where they will not be able to hear what you and the caucusing party are saying. Begin and end each caucus by reminding the party about confidentiality. For example, at the end of the caucus, you could say, "Is there anything you have said in caucus that you do not want the mediators to repeat to the other party?" When the second party comes in, thank him/her for waiting.

Caucusing should be used when:

- The session has become too heated, emotions are running too high or it seems as if someone might lose control.
- More information is needed. For example, when one of the parties is withholding information because she/he is not ready to share it with the other.
- The parties need to be reminded of the ground rules (for example, one person continually interrupts).
- No progress is being made in the joint session. One or both parties need to be reminded that the goal of mediation is to come up with solutions for the future.

It may be necessary to caucus more than once before the mediators are ready for both parties to come together.

What happens during caucusing?

- Additional information can be obtained
- Additional issues can be identified
- Issues can be clarified (factual and emotional)
- Hidden agendas (secret motives) can be discovered
- Bottom lines can be assessed (that is, how far is each person willing to bend)

Caucusing cautions

- If you see one party, you must see all parties.
- Remain with your co-mediator during caucus.
- Parties may worry that the mediator will be won over by the other parties during the caucus.
- Don't forget to thank the waiting party.
- When you begin caucus with second party, remember to get ideas from that person *before* telling him/her the other person's ideas.
- Don't forget to mention confidentiality at the beginning and end of every caucus and ask for permission before discussing concerns with the other party.

EXERCISE #3

LOIS (or LOUIS) AND ANGELA (or ANDY)

Background:

L. initiates mediation because A. threw L.'s new notebook in the mud. A. agreed to mediate. L. is very angry. At first, A. refuses to talk.

Angela/Andy's story:

A.'s mother was mad at him/her this morning. She/He had no time to find matching socks, and left his/her homework paper at home. It was raining. A. had to run to get to homeroom on time, bumped into someone and lost a good pencil.

Lois/Louis's story:

L. noticed that A. was acting very weird today, and was not being friendly. L. says A. hates English class and usually acts up. A. failed another English test and was so mad he/she threw his/her book out the window.

Roleplay the above situation with the two disputants and co-mediators. Practice the Introductions, Opening Statement, Fact Finding and Caucusing.

Stop after caucusing.

After practicing the caucus, discuss with the whole group what the issues are.

- List A.'s and L.'s positions
- Were A's and/or L's interests identified? If so, what were they?
- Were any common interests identified?
- Which issues can be mediated?
- What did the mediator accomplish during the caucus?
- Did either mediator take sides?

CHAPTER FOUR

MEDIATION PROCESS: BRAINSTORMING • COLLABORATING TO EVALUATE OPTIONS • BARGAINING

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BRAINSTORMING

After caucusing, the mediators bring the parties back togther for a joint brainstorming session. The mediator summarizes the interests of each party, pointing out areas of agreement and disagreement. The mediator then encourages the disputants to think about possible solutions that will satisfy the interests of both parties.

"Brainstorming" is a creative way to list ideas that may solve a problem. Brainstorming encourages the parties to work together to look for options in a nonthreatening, non-judgmental atmosphere.

The mediators should begin by explaining brainstorming to the parties.

Rules for Brainstorming

- Say anything that comes to mind; be creative
- All ideas are listed; there is no criticizing or evaluating during brainstorming
- Think of as many ideas as you can

The mediator encourages the parties to "brainstorm" solutions, no matter how unrealistic, until they run out of ideas.

To get the disputants started, the mediator should ask, "What do you think can be done to resolve this situation?" If the parties get stuck, ask, "What other things can you think of?" or "How do you think you could do things differently in the future?" The mediator make very indirect suggestions only if the parties are unable to think of *any* solutions. For example, the mediator may ask, "Have you thought about...," "How would you feel if...?", etc.

EXERCISE #1

Topic: How can we improve cultural understanding at our school.

List as many ideas as you can.

1.

2.

3.

4.

5.

COLLABORATING TO EVALUATE OPTIONS

"Collaborating" means working together. "Evaluating options" means examining them to see if they are workable. During this stage of the mediation process, the mediator helps the parties work together to evaluate the options they listed in the brainstorming session.

The parties may decide to eliminate some options. Then add to, combine or change the options they like to make them better. The mediators should make sure the parties think about the reasons why a particular option will or will not work. Focus on solutions that will improve, or at least not damage, the relationship between the parties.

Reality Testing

"Reality Testing" means examining possible solutions to see how they will work out and determining if they are satisfactory to each party. The mediator may guides the "reality testing," by asking the parties to consider whether certain solutions are realistic, fair, or possible to carry out. Have them predict possible outcomes and analyze the consequences.

Some questions the mediators may want to ask are:

- Which of these options do you think will work best?
- How will this solution work in terms of time (or money or people or location)?
- Can you think of a way to make this option better?
- What will happen if . . .?

EXERCISE #2

Work in small groups. Examine the suggestions listed during Exercise #1. Discuss which options might work best. Work together to determine the three most effective ideas. Then list them in order of priority. Select a Group Reporter who will take notes and report your group's choices to the large group.

1.

2.

3.

BARGAINING

"Bargaining" means making trade-offs or compromises. Bargaining is sometimes called "negotiating."

Once the parties have evaluated several solutions, they can begin to bargain on which solutions will go into their agreement. The goal is to reach a WIN/WIN solution, one which both parties feel good about.

Walk in the other person's shoes

The mediators can help the parties to understand the other side's point of view by asking each person to "walk in the shoes of the other person." For example, the mediator might ask, "How would you feel if you were in her place?"

Bargaining Tips

- Guide the discussion toward the future, not the past.
- Keep the parties from getting stuck rehashing old business over and over. Point out that they both agree there is a problem, and help them focus on how to resolve it.
- Remind them to keep an open mind.
- Praise the parties for their hard work and let them know they are close to reaching a WIN/WIN solution.
- Make sure to write down the decisions they reach because these solutions will be written into the Agreement.

Bargaining Cautions

- Sometimes a person may reveal his/her "bottom line" during the caucus. The mediator must be careful to keep this in confidence (secret) unless that person gave the mediators permission to bring it up in a joint session.
- If confusion arises, the mediators might have to return to an earlier stage (caucusing, brainstorming, or evaluating) of the mediation process.

What happens if the parties can't agree?

The mediator summarizes the areas of agreement and points out areas of disagreement, if any. The parties might decide that the remaining differences are not important enough to stand in the way of agreement. The parties may admit that they are unable to reach an agreement and "agree to disagree" on certain issues. Those issues may be dropped or

postponed for another session.

Mediation works about 85% of the time. Mediators shouldn't feel bad if an agreement is not reached. If the parties can't arrive at a mutually acceptable (WIN/WIN) solution, the mediator may decide to close the mediation session. For example, the mediator could thank the parties for trying mediation and express the hope that even though an agreement was not reached, the parties have a better understanding of the situation. Assure them if they decide to try again another day, they may request another session.

EXERCISE #3

Return to the Lois/Louis and Angela/Andy roleplay. Practice brainstorming, collaborating to evaluate options, and bargaining. Begin after the caucus, when both parties are back together for a joint session.

SAVE YOUR LIST OF SOLUTIONS FOR THE NEXT ROLEPLAY!

CHAPTER FIVE

MEDIATION STAGE: WRITING THE AGREEMENT
• CLOSING STATEMENT

POST-MEDIATION STAGE

WRITING THE AGREEMENT

It is the task of the mediator to summarize the solutions the parties agree upon and write the Agreement.

Tips for writing the agreement

- Try to use the parties' wording.
- Write neatly, organize the issues agreed upon and number each paragraph.
- Be specific. Write out *who* will do *what, when , where, how and what if.*

  Example: Elisa will meet Heather at Broad and Olney on Mondays and Fridays at 7:45 a.m. so they can take the subway together to the special class.
- Write in terms of "promises." Make sure each disputant promises something to the other so the agreement appear balanced.

  Example: Darla promises she will pay for the lost library book she borrowed from Ben. She will pay him $1 every Monday when she comes to class until the book is paid for.

  Ben promises to pay the library $1 every Thursday morning when the library opens until the book is paid for.
- Don't include commitments for people who are not present at the mediation.
- Use simple, neutral words. Do not blame.
- The agreement should also include what will happen if one of the parties fails to live up to his/her part of the agreement.

  Example: If Darla doesn't pay Ben each Monday, she promises to let him use her calculator until she pays.
- Once the mediator writes the agreement:
  - Read each point aloud
  - Ask if there are any changes or additions
  - Ask if the parties understand the agreement and can live up to it
  - Allow the parties time to read the agreement silently
  - The mediators sign the Agreement
  - Witness the parties signing the Agreement

- Give each party a copy
- Destroy all notes

Reminder: If the mediator is a trainee, the Mediation Supervisor should review the agreement before it is signed.

Reminder: The agreement includes only the participants in the mediation. Parties can make promises **only** for themselves, not for people who are absent.

EXERCISE #1

In small groups, look closely at the agreement form on the next page. Study it for:

- Specificity (Who? What? When? Where? How? What if?)
- Clarity (Do you understand it?)
- Completeness (Is anything missing?)

EXERCISE #2

Complete the Lois/Louis and Angela/Andy roleplay. Using the solutions the parties negotiated in the Chapter Four roleplay, write an Agreement using the blank Agreement Form.

SCHOOL MEDIATION AGREEMENT FORM

INITIATING PARTY

Name Kevin Curry

Grade 11

Homeroom Mrs. Smith

RESPONDING PARTY

Name Anthony Rogers

Grade 11

Homeroom Mr. Walker

As an outcome of the Mediation session held on Tuesday.

All parties agree to the following terms: Tony won't cheat off Kevin's paper. Kevin will help Anthony study. They will study at Mary's house.

INITIATING PARTY Kevin Curry

Mediator Calvin Pitts

RESPONDING PARTY Tony Rodgers

Mediator _____

SCHOOL MEDIATION AGREEMENT FORM

INITIATING PARTY	RESPONDING PARTY
Name _____	Name _____
Grade _____	Grade _____
Homeroom _____	Homeroom _____

As an outcome of the Mediation session held on _____.
All parties agree to the following terms: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

INITIATING	RESPONDING
PARTY _____	PARTY _____
Mediator _____	Mediator _____

CLOSING STATEMENT

The parties may wish to express their feelings about the mediation process, the mediator, or one another at this time. Mentioning feelings when parties leave to live out the agreement often aids reconciliation. Reconciliation means that people are able to get over the dispute and put it behind them. It may also mean that they make up as friends.

The mediator may want to ask the parties if they have any questions about what just happened or if they want to say anything to the mediator or each other

The mediator encourages a peaceful ending to the session by thanking the parties for their efforts.

Sometimes the parties shake hands and apologize. Sometimes they thank the mediator. The mediator should not force the parties to shake hands, but the mediator can shake hands with each person.

The mediator also assures the parties that mediation is confidential, saying something like, "Remember that I will not repeat anything which I heard in this room today, and you have also seen me tear up all my notes."

If any follow-up is needed, this should be discussed at this time.

The mediators should escort the parties out of the Mediation Room. The mediators stay in the Mediation Room to fill out the De-Briefing Form.

What happens during the closing statement?

- Hard work is recognized.
- Peacemaking is encouraged.
- Privacy is promised.

POST-MEDIATION STAGE

After the mediation session is over, the mediator must maintain neutrality. This is true

EXERCISE #3

In small groups, practice your closing statement.

POST-MEDIATION STAGE

After the mediation session is over, the mediator must maintain neutrality. This is true whether the mediator meets the two parties in the classroom immediately after they leave the mediation room, or if they meet on the street a week later. This does not mean that friends do not behave as usual, only that they do not discuss the mediation.

Challenges to Neutrality

Mediators face different challenges before, during and after mediation. After mediation, some parties will test the mediator's ability not to take sides. Several examples follow:

- If the emotional issues in the case were not fully resolved, one of the parties might stay behind to make a negative remark to the mediator.
- Perhaps one party signed the agreement but didn't really believe the other would live up to the bargain. This person might complain about this to the mediator after the mediation.
- The mediator runs into one of the parties from a case that was mediated several weeks before. This person (Richard) tells the mediator that the other party (Mark) did not follow through with the agreement and is causing worse problems by talking about Richard. Also, Richard says that Mark has been bad-mouthing the mediation process and accusing the mediator of taking sides with Richard.

EXERCISE #4

In small groups discuss the above examples and ways to handle each one.

EXERCISE #5

Roleplay the situation described in Exercise #4.

When It Is Appropriate for One Party to Remain

During the caucus, or even in the joint session, one of the parties might mention an interest in additional information about options or resources, such as seeing the school counselor or finding a tutor. It would be acceptable for the mediator to give this information in private to that person after the mediation is finished.

The mediator can inform both parties that one is remaining for information requested during the mediation.

De-briefing Form

The mediator should fill out a follow-up form after the session. This form provides an opportunity for the mediator to evaluate his or her feelings about the case and the skills she/he used. The follow-up form is kept with the intake and agreement forms in the Mediation Room. These are the only written records of a case once mediation is completed.

Follow-Up Mediation Sessions

Mediation is usually completed in one session. However, if the dispute has several issues, the mediator may suggest that the parties return for another session. Mediators should consult with the Mediation Supervisor.

EXERCISE #6

Using the De-Briefing Form on the next page, evaluate the Lois/Louis and Angela/Andy mediation session.

SCHOOL MEDIATOR DE-BRIEFING FORM

Mediation Date: _____ Case ID: _____

Mediator completing this form: _____

Who was your Co-Mediator in this case? _____

What was the main issue being mediated?

☐ Disagreement (verbal) ☐ Behavior ☐ Property

☐ Fighting (physical) ☐ Rules ☐ Money

☐ Truancy ☐ Rumors ☐ Other_____

Did you or your co-mediator mention confidentiality in the opening statement?

☐ Yes ☐ No

Did you and your co-mediator caucus with the parties?

☐ Yes ☐ No

Did you or your co-mediator mention confidentiality in each of the caucuses?

☐ Yes ☐ No ☐ Not sure

Did caucusing appear to help the parties reach an agreement?

☐ Yes ☐ No ☐ Not sure

Was there anything else the mediator(s) could have done to aid the parties?

☐ Yes ☐ No ☐ Not sure

Explain: _____

How satisfied do you think the Initiating Party was when the mediation ended?

☐ Very Satisfied ☐ Unsatisfied ☐ Not sure

☐ Satisfied ☐ Very Unsatisfied

Explain: _____

How satisfied do you think the Responding Party was when the mediation ended?

☐ Very Satisfied ☐ Unsatisfied ☐ Not sure

☐ Satisfied ☐ Very Unsatisfied

Explain: _____

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How satisfied are you, as the mediator, with the way the mediation went?

☐ Very Satisfied ☐ Unsatisfied ☐ Not sure

☐ Satisfied ☐ Very Unsatisfied

Explain: _____

How satisfied are you with the way you and your co-mediator worked together during the mediation?

☐ Very Satisfied ☐ Unsatisfied ☐ Not sure

☐ Satisfied ☐ Very Unsatisfied

Explain: _____

Was there anything about this mediation that made it difficult to stay neutral (not take sides)?

☐ Yes ☐ No ☐ Not sure

Explain: _____

Based on this mediation, is there anything that you would have liked to have learned more about in training?

☐ Yes ☐ No ☐ Not sure

Explain: _____

In looking back, is there anything you wish you had done differently in this mediation?

☐ Yes ☐ No ☐ Not sure

Explain: _____

Was an Agreement reached?

☐ Yes ☐ No

Explain: _____

Was follow-up recommended?

☐ Yes ☐ No

Explain: _____

Other Comments: _____

_____

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CHAPTER SIX

ETHICAL ISSUES AND SPECIAL SITUATIONS

ETHICAL ISSUES

Confidentiality

Mediation often reveals private information about the parties. To protect the privacy of the parties and to encourage them to talk openly about the conflict, the mediator keeps all details of the intake and mediation session confidential. Information will not be revealed to anyone but the supervisor/trainer of the school mediation program, unless the parties agree otherwise.

During the opening statement, the mediator reassures the disputants that their case will not be discussed. Mediators may find it helpful to take notes during the mediation session; however, all notes should be destroyed after the session.

Remember: The parties may discuss the case with anyone they like, unless they agree otherwise. The mediators, however, are on their honor to respect the privacy of the parties.

When Confidentiality Cannot be Kept

There are a few, limited situations in which confidentiality must be broken. These include cases when information regarding child abuse and other serious crimes comes up.

These issues are not suitable for mediation and such cases will not knowingly be mediated in school. However, information regarding child abuse or felonies may come out in mediation sessions. If this happens the mediator should:

- Inform the parties that these issues cannot be mediated.
- As soon as the mediation session is over, tell the mediation supervisor what occurred, so that the supervisor can take the matter to the proper school authorities.

If a mediator runs into a problem at any time, he/she should consult with the supervisor/trainer.

Individual schools may set policies for other issues that are off-limits for mediation.

Maintaining Neutrality

Successful mediation depends upon the mediator's ability not to take sides. However, every mediator holds personal opinions, values and prejudices which may bias him/her for or against one of the parties. This may cause a mediator to disregard one person's statements or try too hard to be fair to both parties.

For example, some mediators may feel more at ease with friendly, talkative people. Similarly, disputants with the same interests, background and values will seem more

familiar to a mediator and the mediator may be drawn to those parties.

Current life situations or particular past experiences of the mediator may also influence a mediator. For example, a mediator whose radio was damaged in a school fight might have difficulty staying neutral in a mediation involving a walkman which was smashed in the same kind of incident.

It is not necessary to ignore all personal values. In fact, this would be impossible. It is helpful, however, for the mediator to become more aware of what types of people and situations strongly affect him/her.

Mediators must continually practice neutrality, both by the way they speak and by their gestures, eye contact, etc.

After you become aware of your personal biases, you can handle them several ways during a mediation session:

- Consciously put them out of your mind and make an effort to compensate for any biases for or against one party.
- Talk with another mediator or the supervisor about how to handle the situation.
- Decide not to mediate that particular case.

EXERCISE #1

Think for a few minutes about what kinds of behavior biases you towards or against a stranger or an acquaintance. Write down things that cause you to favor or disfavor someone you have just met.

1.
2.
3.
4.
5.
6.
7.
8.
9.

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EXERCISE #2

List the ways in which you respond to people you do not like. Write down your specific reactions (e.g., turn away, laugh, try too hard to be friendly).

1.
2.
3.
4.
5.
6.
7.
8.
9.

EXERCISE #3

Make a list of the kinds of disputes you think would make you feel uncomfortable. How might you maintain neutrality in these situations?

Type of Dispute:	Ways to Stay Neutral:
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____

SPECIAL SITUATIONS

Dealing with Personalities

Certain types of people raise special problems for most mediators. The following suggestions may help in dealing with these situations.

Overly-Emotional Person

- Stay calm and in control of the situation.
- Keep your voice soft and steady, your body posture relaxed and in control.
- Allow the person to take a short break to cool off.
- Meet with the person alone and stress the importance of working together.

The Compulsive Talker

- Gently, but firmly, redirect the person to the task.
- Ask very specific questions and insist on specific responses; do not allow the person to go off on a tangent.
- Do not allow a person to interrupt the other; tell the person each party will have his/her turn and he/she must not be interrupted.
- If the disputant persists in talking all the time, meet separately with him/her.

Language Problems

- If this is known beforehand, arrange to have a translator available. The translator should be an impartial party rather than a friend of the disputant.
- If no translator is available, keep your language simple.
- If necessary, use drawings or diagrams.
- Postpone mediation until a translator is available.

Violent Persons

- Violence can never be tolerated during a mediation session.
- Firmly tell the person that the session will be terminated if there is a possibility of violence.
- Caucus with the person before emotions get out of control.

- If you feel in danger for yourself or the other party, end the session.

Silent Person

- Ask specific questions that do not require long answers.
- If the person seems confused or frightened, give them a series of responses and ask if one of the responses is accurate; be careful, however, not to put words in his/her mouth.
- Meet with the person alone and stress the importance of both parties' contributions. Find out why the person is not talking (e.g., shy, frightened, doesn't know what to say) and work out a way of dealing with his/her problem before the next joint session.

People Who Will Not Compromise

- Reemphasize to both parties the importance of compromise in reaching an agreement.
- Meet separately with the individual and find out why he/she will not compromise.
- Do not hesitate to apply some pressure to the party during a caucus if that seems appropriate (e.g., if the party is the respondent – the person responding to the complaint – inform him/her what the consequences would be: that this could end up in court).
- If the party persists in refusing to mediate, terminate the mediation.

The "Yes" Person

- Reemphasize that the disputants come up with their own solution to their problems and in order for mediation to work, both parties must actively participate in the discussions.
- Ask questions which require more than a "yes" or "no" response.
- Ask this person's opinion before anyone else gives his/her opinion.

The Blamers

- Ask the parties to face each other and talk directly to each other.
- The first person states his/her point of view about the conflict. The mediator asks the second person to restate what he/she heard.
- Repeat the process with the second party talking and the first party listening

and then restating.

- The mediator then asks each person to identify his/herpossible contribution to creating the conflict. Negotiations tend to move forward when one party hears the other admit that he/she is less than perfect.

Cross-Cultural Disputes

- Sometimes language is not a problem, but certain ways of speaking may be culturally different.
- The parties may become annoyed or confused; frequently clarify what each party means.
- "Let me see if I understand..." is one useful phrase. It is better for the mediator to ask for clarification than to expect the parties to clear up confusion.

ROLEPLAYS FOR SPECIAL SITUATIONS

The following roleplays match several of the special situations on the previous pages. Compose your own roleplays to practice the remaining situations.

Over-Emotional Persons

Cheryl and Nickie agree to try mediation instead of being suspended for screaming in the hall. At mediation, however, they continue to accuse each other when the mediator tries to get them to take turns telling their stories. They are both upset because of a misunderstanding about Cheryl's boyfriend.

The Compulsive Talker

Charles accused Danielle of making him look stupid when she laughed at what he said in class. The argument continued after class and several other students joined in. The teacher asked Charles and Danielle if they would like to try mediation and they agreed. In mediation, Charles refuses to stop talking about Danielle's attitude and tries to get the mediator to take his side.

Silent Person

Tom and Mark come to mediation because Tom took Mark's bicycle without his permission and rode it home from school. Mark says Tom stole the bike. Tom says he just borrowed it. When the mediator asks why he didn't talk with Mark before "borrowing" the bike, Tom just stares at his shoes and doesn't say anything. When pressed, he just mumbles "because" and keeps looking at the floor.

The "Yes" Person

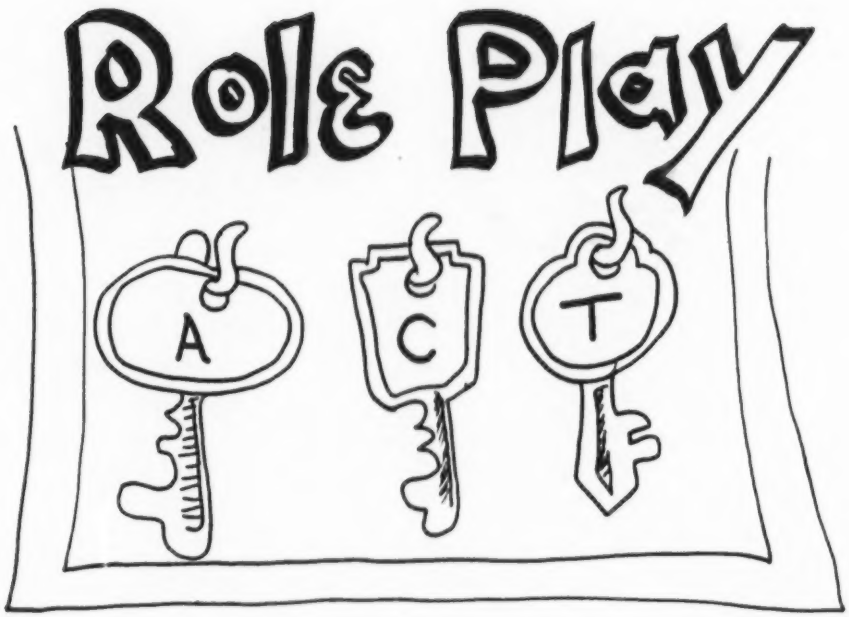
Clark and Bennett have been buddies for a long time. One day Clark grabbed Bennett's walkman and broke it. During mediation, they agree that Bennett will borrow Clark's walkman for one weekend. The mediator thinks the agreement is unbalanced.

The Blamers

Maria and Elizabeth, two old friends, cannot get over the loss of a photo album. Each is convinced the other destroyed it.

People Who Will Not Compromise

Fred and Charles are good friends. Fred plays on the basketball team. Charles had agreed to help Fred with his math. Lately Fred has demanded that Charles do all his homework assignments. Fred wants Charles to continue to do his homework assignments because if his grades drop he will be kicked off the basketball team. The basketball team means a lot to him. He will do anything to stay on the team.



CHAPTER SEVEN

INTEGRATED ROLEPLAYS

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INTEGRATED ROLEPLAYS

The previous sections of this training manual have provided you with a chance to practice and understand the various pieces of the mediation process. The following roleplay is designed to enable you to put your new skills and knowledge together.

ROLEPLAY #1: FRANKLIN AND DELORES

FACTS

- Franklin and Delores are in the seventh grade at Harroway School. They have been friends since they were in the fifth grade. When Franklin moved to a house next door to Delores they began to walk to school together.
- This year Delores began leaving home early to go to a special science club that meets before school. Franklin doesn't see why she has to do that. He says he wouldn't want to. Delores thinks he is mad because Samuel, whom she likes, is in the club. But she likes Franklin too and doesn't see why that should make a difference.
- On Tuesday, in advisory class, the teacher asked Delores to give a report on the science club so that more students might hear about it and join the club. While she spoke, Franklin gave a loud yawn and stretched his arms as if he were trying to keep awake. Delores saw him and got very angry. She brought her book down on his head and cut his forehead with the hard edge. Each of them loudly accused the other of disrupting the class.
- The teacher said that both students should go to the Principal's Office, but Delores asked her if they could go to mediation instead, if Franklin agreed. Franklin said he would like to take it to mediation. He had some things he wanted to say. The teacher agreed, filled out an Intake Form and arranged for them to go to mediation during the next period.

SCHOOL MEDIATION INTAKE FORM

Date March 18, 1993 **Case ID:** gs9326

Initiating Party Delores Holmes

Homeroom 263 **Grade** 7 **Teacher** Mrs. Mellow

Has the Initiating Party used mediation before?

☐ Yes, as Initiating Party ☐ Yes, as Responding Party ☒ No

Responding Party Franklin Evers

Homeroom 265 **Grade** 7 **Teacher** Mrs. Mellow

Has the Responding Party used mediation before?

☐ Yes, as Initiating Party ☐ Yes, as Responding Party ☒ No

Have these parties been in mediation together before?

☐ Yes, different conflict ☐ Yes, same conflict ☒ No

How long have these parties been involved with this current conflict?

☐ Not sure ☐ More than one week but less than a month ☐ One month or more

☒ One week or less

Referred by (name): _____

☐ Teacher ☐ Counselor ☒ Self

☐ Student ☐ NTA ☐ Other _____

This Conflict Involves:

☐ Disagreement (verbal) ☐ Truancy ☐ Property

☐ Rumors ☐ Behavior ☐ Money

☒ Fighting (physical) ☐ Rules ☐ Other _____

Presenting Problem: Delores hit Franklin on the head with her book.

Was a Mediation Scheduled?

☒ Yes ☐ No, explain _____

Mediation Date: TODAY **Time:** NOW **Room:** HERE

Co-Mediators Assigned: 1. YOU 2. YOUR CO-MEDIATOR

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Franklin's Role

Issue: Friendship

You are jealous because Delores and Samuel are friends. You miss walking to school with Delores in the mornings. You are shy.

Issue: School

You have a difficult time in science class. You think that the science club would be difficult, too, and that you would fail.

Delores' Role

Issue: Friendship

You make friends easily. You admit that at first you tried to make Franklin jealous of Samuel. You are embarrassed that you lost your temper in class and are truly sorry that Franklin's forehead was injured. You really want to stay friends with Franklin. You don't want to give up your friendship with Samuel.

Issue: School

You really like the science club. Since joining, regular science class is easier and more interesting.

SCHOOL MEDIATION INTAKE FORM

Date April 2, 1993 **Case ID:** GS9355

Initiating Party Rita Right

Homeroom 403 **Grade** 10 **Teacher** Mr. Samuels

Has the Initiating Party used mediation before?

☐ Yes, as Initiating Party ☐ Yes, as Responding Party ☒ No

Responding Party Joanne Jinx

Homeroom 403 **Grade** 10 **Teacher** Mr. Samuels

Has the Responding Party used mediation before?

☐ Yes, as Initiating Party ☐ Yes, as Responding Party ☒ No

Have these parties been in mediation together before?

☐ Yes, different conflict ☐ Yes, same conflict ☒ No

How long have these parties been involved with this current conflict?

☐ Not sure ☐ More than one week but less than a month ☐ One month or more

☒ One week or less

Referred by (name): _____

☐ Teacher ☐ Counselor ☒ Self

☐ Student ☐ NTA ☐ Other _____

This Conflict Involves:

☒ Disagreement (verbal) ☐ Truancy ☐ Property

☐ Rumors ☐ Behavior ☐ Money

☐ Fighting (physical) ☐ Rules ☐ Other _____

Presenting Problem: Joanne won't talk to Rita. They have to do a science project together. Joanne says Rita got her into trouble with her mother and she was grounded.

Was a Mediation Scheduled?

☒ Yes ☐ No, explain _____

Mediation Date: TODAY **Time:** NOW **Room:** HERE

Co-Mediators Assigned: 1. YOU **2.** YOUR CO-MEDIATOR

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ROLEPLAY #2: RITA RIGHT AND JOANNE JINX

Rita Right's Role

Facts

- Two weeks ago, Joanne and Rita had a heated argument and they are not longer speaking to each other. Joanne had asked Rita to cover for Joanne if Joanne's mother, Mrs. Jinx, called while Joanne was out with her boyfriend, Joe-Joe. Rita agreed to do it and then didn't. Joanne got in trouble and is grounded for one month.
- Joe-Joe is five years older than Joanne.
- Rita and Joanne have been friends since third grade.
- Rita and Joanne have a joint science project due in four weeks. It counts for 50 percent of the grade in Science class. Because they are not talking, they have not worked on the project yet. It's too late to find a new project partner.

Issue: Guilt

When Joanne asked you to cover for her you felt very uncomfortable about lying to Mrs. Jinx; however, Joe-Joe was there and you wanted him to think you had it "going on." Joanne put you on the spot. She doesn't seem to care about what you think anymore.

Issue: Friendship/Values

You have helped Joanne out of jams before, but this time she went too far. You wanted to cover for Joanne even though you felt uncomfortable about the situation. You would have fulfilled your promise but you couldn't because your mother was in the room when Mrs. Jinx called looking for Joanne. You could not lie in front of your mother. Plus, Joanne never gave you a chance to explain what happened. She just started yelling. She should have known you would not have let her down without a good reason. Rita would like to stay friends with Joanne.

Issue: Joe-Joe

In caucus, you admit you don't like Joe-Joe. You think he is too old for Joanne.

Issue: Science Project

You are really worried about finishing the Science project on time. You want a good grade in Science class.

Joanne Jinx's Role

Facts

- Two weeks ago, Joanne and Rita had a heated argument and they are not longer speaking to each other. Joanne had asked Rita to cover for Joanne if Joanne's mother, Mrs. Jinx, called while Joanne was out with her boyfriend, Joe-Joe. Rita agreed to do it and then didn't. Joanne got in trouble and is grounded for one month.
- Joe-Joe is five years older than Joanne.
- Rita and Joanne have been friends since third grade.
- Rita and Joanne have a joint science project due in four weeks. It counts for 50 percent of the grade in Science class. Because they are not talking, they have not worked on the project yet. It's too late to find a new project partner.

Issue: Betrayal

You feel betrayed by your best friend. You are very angry with Rita for getting you into trouble with your mother. She really let you down.

Issue: Friendship/Values

Rita has helped you out of tough spots in the past. You can't understand why she agreed to back you up and then changed her mind. If she didn't want to do it, she should have said so in the first place. What's the big deal? It was just a little lie.

Issue: Joe-Joe

Your mother does not approve of your relationship with Joe-Joe and would not have allowed you to go out with him. You won't be able to see Joe-Joe while you are grounded because he doesn't attend your school. You believe the whole situation is Rita's fault.

Issue: Science Project

You always turn in my work on time and it will hurt my Science grade if you and Rita don't finish the project together.

SCHOOL MEDIATION INTAKE FORM

Date May 1, 1993 Case ID: GS9384

Initiating Party K.Kane

Homeroom 112 Grade 11 Teacher Mrs. Campbell

Has the Initiating Party used mediation before?

☒ Yes, as Initiating Party ☐ Party

☐ Yes, as Responding ☐ No

Responding Party T. Mackey

Homeroom 112 Grade 11 Teacher Mr. Smith

Has the Responding Party used mediation before?

☐ Yes, as Initiating Party ☐ Yes, as Responding Party ☒ No

Have these parties been in mediation together before?

☐ Yes, different conflict ☐ Yes, same conflict ☒ No

How long have these parties been involved with this current conflict?

☐ Not sure ☒ More than one week but less than a month ☐ One month or more

☐ One week or less

Referred by (name): _____

☐ Teacher ☐ Counselor ☒ Self

☐ Student ☐ NTA ☐ Other _____

This Conflict Involves:

☒ Disagreement (verbal) ☐ Truancy ☒ Property

☐ Rumors ☒ Behavior ☐ Money

☐ Fighting (physical) ☐ Rules ☐ Other _____

Presenting Problem: Damages from house party given by K. Kane.

Was a Mediation Scheduled?

☒ Yes ☐ No, explain _____

Mediation Date: TODAY **Time:** NOW **Room:** HERE

Co-Mediators Assigned: 1. YOU 2. YOUR CO-MEDIATOR

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ROLEPLAY #3: K. KANE AND T. MACKEY

K. Kane's Role

Facts:

- K. Kane had a party at his/her house. K. Kane had been given permission by her parents to invite four friends. T. Mackey brought six friends.
- Two of T. Mackey's friends had a food fight and ruined Mrs. Kane's tan Oriental rug.
- T. Mackey broke a vase while dancing.
- Everybody left without helping K. Kane clean up.
- K. Kane is grounded for one month.
- T. Mackey and K. Kane have been friends for six years.

Issue: Damages

Your parents are holding you responsible for the cost and/or work involved in taking care of the damages from the party. The rug might be okay if it is cleaned, but if it isn't you may have to replace it. It's an Oriental rug. You're not sure how much it's worth because it's really old. You know that Oriental rugs increase in value as they age. You think T. Mackey should pay for the rug because his friends started the food fight. The vase is worth about $50. You think T. Mackey should pay for the vase because he was the one who broke it.

Issue: Clean-up

You are angry with T. Mackey for not offering to stay and help you clean up the mess after the party. You believe that if T. Mackey was a true friend he/she wouldn't have brought people over who would trash your home and then left without trying to make things right.

Issue: Friendship

You reveal in caucus that you think T. Mackey has recently started hanging with a bad crowd. T. Mackey never asked permission to bring guests. You feel that T. Mackey should be responsible for their behavior. During the party, T. Mackey never tried to stop his/her friends from acting crazy. You're not sure you want to be friends with T. Mackey anymore.

T. Mackey's Role

Facts:

- K. Kane had a party at his/her house. K. Kane had been given permission by her parents to invite four friends. T. Mackey brought six friends.
- Two of T. Mackey's friends had a food fight and ruined Mrs. Kane's tan Oriental rug.
- T. Mackey broke a vase while dancing.
- Everybody left without helping K. Kane clean up.
- K. Kane is grounded for one month.
- T. Mackey and K. Kane have been friends for six years.

Issue: Damages

You admit that you broke the vase. You are willing to negotiate about paying for it. You feel that K. Kane's friends are equally responsible for messing up the rug.

Issue: Clean-up

K.Kane never asked you to clean up after the party. If he wanted you to stay and help, he should have asked.

Issue: Friendship

K. Kane has been bad-mouthing your new friends. In caucus, you reveal that you met your new friends at the Boys & Girls Club. If K. Kane can't accept your new friends, you don't care whether or not you remain friends with him.

CHAPTER EIGHT

LEGAL PRINCIPLES

LEGAL PRINCIPLES

During the past ten to fifteen years, the idea of mediation or alternative dispute resolution has spread throughout the United States. Neighborhood Justice Centers and Dispute Settlement Centers provide alternative settings to the traditional courtroom. These centers use mediation instead of formal judicial procedures to resolve disputes.

More recently the concept of mediation was taken into schools to help students learn that there are different ways to resolve disagreements. However, mediation can be and is used in a variety of settings to handle many different kinds of disputes.

For instance, Neighborhood Justice Centers, such as the one at the Good Shepherd Neighborhood House, mediate cases involving family or neighborhood disputes (e.g., a mother and daughter arguing about curfew, two neighbors arguing about a barking dog), disagreements between landlords and tenants or shopkeepers and customers, and private criminal matters.

The following section contains some definitions of basic legal principles, as well as information about how the legal system operates. This is provided in order for you to understand how mediation may be used as an alternative to the traditional legal system.

CRIMES

What is a crime?

A crime occurs when a person breaks a law that subjects him or her to a punishment. The punishment can take the form of a fine, imprisonment or both.

A criminal act is considered to hurt society as a whole, not just the individual who is injured. Therefore, crimes are brought to court by the District Attorney who represents the interests of the general public. The injured person is not a party to this legal action, although he or she may be a witness at the trial.

How crimes differ from civil suits

Civil suits are brought in all situations that do not involve criminal acts. These cases are brought by individual citizens on their own behalf. Individuals who file civil suits seek compensation for their injuries.

Civil cases involve actions that are not considered a threat to society as a whole. Rather, these suits involve situations where one individual is injured as a result of another person's actions.

Thus, civil cases differ from criminal cases in two ways:

- The purpose of a criminal case is to punish the lawbreaker; the purpose of a

civil case is to compensate the injured party.

- Criminal cases are brought by the District Attorney (or prosecutor) on behalf of the general public; civil cases are brought by individuals on their own behalf.

Sometimes,a law breaker can be brought to court for both civil and criminal cases. For example, if John punches Jim, John could be arrested and subjected to criminal penalties, or Jim could file a civil suit to obtain money from John for his medical bills.

HOW A CRIMINAL CASE GETS TO COURT

Arrest

Arrest is the first step in any criminal case. Only the police can arrest an individual, and they can make the arrest only in certain situations:

- When a judge or other legal official gives the police a piece of paper called an arrest warrant.
- When the police have "probable cause," that is, enough evidence to believe that an individual committed a serious crime, called a felony. This evidence can include a police officer witnessing the crime or any information that is obtained after the crime has been committed.
- When a less serious crime, called a misdemeanor, is committed in front of a police officer.

When people are arrested, the police must read them their rights, known as the "Miranda Warning." This includes the right to a lawyer and the right to remain silent.

The police can conduct a search when they arrest somebody. They can also search an area if they get a search warrant from a judge or other legal official.

What the District Attorney Does

After an individual is arrested, the District Attorney decides whether to prosecute the case; that is, whether to bring it to court. This decision is usually based on how solid the evidence is against the defendant. The District Attorney also decides what penalties to ask for. (Remember, this can include fines, probation and imprisonment.)

The District Attorney then represents the public's interest by prosecuting the case. A defendant should get a lawyer at this point if he or she has not already.

Where a criminal case is heard:

Criminal cases must be heard by a judge or jury as soon as possible in the local trial court. In Philadelphia, this court is called Municipal Court for less serious cases and

Common Pleas Court for more serious offenses. How serious a case is depends on what penalties the District Attorney asks for.

HOW A CIVIL CASE GETS TO COURT

Civil cases involve a wide variety of situations. Below are some situations in which an individual could bring a civil action:

- When two or more parties make a formal agreement, called a contract, and one party fails to live up to his or her end of the bargain.
- When one person is physically injured as a result of another's careless or reckless behavior. For example, Mary parks her car, but leaves it in gear and the car rolls into the street and hits Jane who falls and breaks her leg.
- When one person's property is damaged as a result of another's careless or reckless behavior.
- When a person believes he or she has been fired from a job unjustly.

These are only some of the situations in which a civil case can be brought. What others can you think of?

When an individual believes he or she has been injured (this includes physical injury, damage to property or monetary loss), he or she visits a lawyer. The lawyer will review the case and state whether there is a good chance of recovery.

If the individual decides to file an action, the lawyer drafts a "complaint" and sends it to the other party. The other party then responds on another piece of paper called an "answer." Then both parties, usually through their lawyers, obtain information from each other about the case. The process is called "discovery" and it can take many months or even years.

The lawyers may try to get the parties to settle their differences out of court. If they can't, a judge or jury will hear the case in a local trial court. The judge or jury will decide who is right and who is wrong. If they decide that the person who filed the case (i.e., the complainant) is right, they will order the other party (i.e., the respondent) to make compensation. Usually, this involves the payment of a certain amount of money.

HOW MEDIATION CAN HELP

Mediation is a useful alternative in many, but not all, legal cases. It can help the legal system and the individuals involved in many ways, including the following:

- Mediation can shorten the time it takes to resolve a dispute. A civil case in Pennsylvania can take up to seven years to be heard by a jury!
- Mediation provides a situation in which both parties can win.

- Mediation gets to underlying issues which can lead to a more meaningful and lasting solution.
- Mediation allows the participants to come up with their own solutions. The parties to a mediation are not limited by the options a court offers.
- Mediation empowers individuals. It given them the opportunity to take control of their lives, rather than have others make decisions for them. It teaches skills that can last a lifetime.

Can you think of any other benefits of mediation? List them below.

1.
2.
3.
4.
5.
6.
7.
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9.
10.